

APPEAL NO. 020441
FILED MARCH 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 28, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The claimant appealed and urges, essentially, that the hearing officer erred in these determinations. The respondent (self-insured) filed a response, urging affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was injured at work when, while standing on a ladder stocking inventory, a can of juice fell out of the bottom of a box onto his left foot; that he reported his injury to his supervisors and coworkers immediately; that he was diagnosed with a sprain or strain to his left foot; that he was released to light duty with restrictions; that he worked from January 2001 to April 2001 for the employer; and that after April 19, 2001, the employer did not offer him any light-duty work with a leg cast restriction. Dr. G's medical report dated August 16, 2001, states that "[i]n summary, I believe this is an aggravation of a preexisting condition." There is substantially conflicting evidence as to the how the injury occurred and whether the employer offered light duty to the claimant. The hearing officer made clear that he did not find the claimant's evidence persuasive.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the course and scope of employment. An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. A "compensable injury" is "an injury that arises out of and in the course and scope of employment" Section 401.011(10). The hearing officer was not persuaded by the claimant's testimony or the medical records in evidence that the claimant sustained the claimed injury. We are satisfied that the hearing officer's injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Since we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We note that the claimant has attached to his request for review certain documents which were not in evidence at the hearing. The Appeals Panel does not generally consider

evidence offered for the first time on appeal and we find no basis for doing so in this case. Texas Workers' Compensation Commission Appeal No. 950331, decided April 18, 1995.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **DAYTON HUDSON CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge